IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10820 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMINBIN MOHAMMAD SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10820 of 2001

MR DM THAKKAR for Petitioner No. 1

MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 04/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 5th July, 2001 passed by the District Magistrate, Junagadh in exercise of power under Section 3

of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered eight registered offences against the detenu under the Bombay Prohibition Act. Statements of four anonymous witnesses were recorded by the sponsoring authority, out of which statements of only two anonymous witnesses were verified by the detaining authority. The other two witnesses were not even verified by the detaining authority. However, detaining authority have exercised powers under Section 9(2) in respect of all the four witnesses and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public health and public order.

3. Learned Advocate Ms. Pahwa challenges the order on the ground that the detaining authority has not verified two statements of anonymous witnesses and still powers under Section 9(2) of the Act are exercised, which has infringed the right of the detenu of making an effective representation and therefore, the detention of the detenu would be vitiated.

3.1 She further submitted that so far as statements are concerned, the authority has exercised powers under Sec. 9(2) of the PASA Act, in absence of any cogent material. No exercise is undertaken to verify whether the fear expressed by the witnesses is genuine or imaginery. This improper exercise of powers of claiming privilege under Sec. 9(2) of the PASA Act has also affected the right of the detenu of making an effective representation. She therefore urged that the petition may be allowed.

4. Learned Assistant Government Pleader Mr. S.S.Patel has opposed to this petition.

5. Having regard to the rival side contentions, it is amply clear that the statements of two anonymous witnesses out of four recorded by the sponsoring authority, were verified by the detaining authority on 4.7.2001 and order was passed on 5.7.2001. So far as the statements of witnesses are concerned, the satisfaction recorded by the detaining authority is not on basis of any cogent material. As observed by the apex Court in Bai Amina w/o Ibrahim Abdul Rahim Alla Vs. State of

Gujarat, reported in 1981 GLR 1186, the authority is expected to consider the general background, character, antecedents, criminal tendency or propensity, etc. of the detenu and such of those matters as are relevant in the context of the informant must be enquired into and carefully examined by the detaining authority with a view to satisfying itself that the alleged apprehension is not imaginary or fanciful or that it is not merely an empty excuse invented by the informant, inter alie, to protect himself against the falsity of his version being exposed by an effective explanation of the detenu or to hide his own involvement or to conceal his enmity with the detenu.

5.1 In order to meet with this requirement, the detaining authority would be required to undertake a further exercise in addition to examining the anonymous witnesses. There is nothing to indicate that such an exercise is undertaken. A witness who has stated something before the functioning authority is bound to stick to his version before the detaining authority when he is summoned for verification, but what is stated by him is correct and genuine or not can be tested only after his version is cross-checked through other sources by undertaking further exercise. That having not been done, the subjective satisfaction cannot be said to have been recorded on the basis of any material and therefore, there is improper exercise of power under Section 9(2) of the PASA Act.

5.2 It would also be proper to record that while exercising powers under Section 9(2) of the PASA Act, the authority is expected to weigh the constitutional right of the detenu on one hand and the public interest on the other and only if the public interest out-ways the constitutional right of the detenu, the power under Section 9(2) can be exercised. This would also call for some exercise, which is required to be indicated and that not having been done, the order of detention cannot be permitted to stand. The continued detention of the detenu therefore, is vitiated.

5.3 The authority cannot be said to have sufficient time to properly verify the genuineness of the fear expressed by the witnesses and the need for exercise of power under Section 9(2) of the PASA Act. There was no scope for the detaining authority to weigh the right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution of India, as against the need for the exercise of power under Section 9(2) of the PASA Act. In this regard, decision in the case of Kalidas Kahar Vs. State of

Gujarat 1993 (2) GLR 1659 can be profitably be referred to. The result is that the order of detention stands vitiated and cannot be permitted to stand. The petition therefore deserves to be allowed.

5A. The registered offences are more than 3 months old. There is nothing to indicate continuity in the alleged activities. They cannot be form a valid ground for detention.

6. The petition is therefore, allowed. Order of detention dated 5.7.2001 passed by the District Magistrate, Junagadh is quashed and set aside. Detenu Aminbin Mohammed Shaikh be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave, J.)

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